

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**ANTHONY LEROY DAVIS,**

**Plaintiff,**

**v.**

**CASE NO. 18-3117-SAC**

**DAN SCHNURR, et al.,**

**Defendants.**

**ORDER**

Plaintiff, Anthony Leroy Davis, is a state prisoner housed at Hutchinson Correctional Facility (HCF). Plaintiff filed this §1983 action against Dan Schnurr, Warden of HCF, and Corizon Health Services, primarily complaining about the medical treatment he received for an illness in January of 2018. Mr. Davis believes he had influenza, while the medical staff diagnosed viral cold-like symptoms.

The Court entered an Order (ECF No. 6) denying Plaintiff's motion to proceed *in forma pauperis*, finding Plaintiff is subject to the "three-strikes" provision under 28 U.S.C. § 1915(g). The Court examined the Complaint and attachments and found no showing of imminent danger of serious physical injury. The Court also granted Plaintiff until November 26, 2018, to submit the \$400.00 filing fee. The Court's order provided that "[t]he failure to submit the fee by that date will result in the dismissal of this matter without prejudice and without additional prior notice." (ECF No. 6 at 2.) Plaintiff has failed to pay the filing fee by the deadline set forth in the order.

Rule 41(b) of the Federal Rules of Civil Procedure "authorizes a district court, upon a defendant's motion, to order the dismissal of an action for failure to prosecute or for failure to

comply with the Federal Rules of Civil Procedure or ‘a court order.’” *Young v. U.S.*, 316 F. App’x 764, 771 (10th Cir. 2009) (citing Fed. R. Civ. P. 41(b)). “This rule has been interpreted as permitting district courts to dismiss actions *sua sponte* when one of these conditions is met.” *Id.* (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)). “In addition, it is well established in this circuit that a district court is not obligated to follow any particular procedures when dismissing an action *without prejudice* under Rule 41(b).” *Young*, 316 F. App’x at 771–72 (citations omitted).

The time in which Plaintiff was required to submit the filing fee has passed without Plaintiff paying the filing fee as ordered by the Court. As a consequence, the Court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders.

**IT IS THEREFORE BY THE COURT ORDERED** that this action is **dismissed without prejudice** pursuant to Fed. R. Civ. P. 41(b).

**IT IS SO ORDERED.**

**Dated on this 10<sup>th</sup> day of December, 2018, in Topeka, Kansas.**

s/ Sam A. Crow  
**SAM A. CROW**  
**U. S. Senior District Judge**